

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNITED SERVICES AUTOMOBILE
ASSOCIATION,

Plaintiff,

v.

PNC BANK N.A.,

Defendant.

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Case No. 2:20-CV-00319-JRG-RSP

ORDER

Before the Court is the Motion for Protective Order and for Sanctions (Dkt. No. 266), filed by Non-Party Mitek Systems, Inc. Mitek asserts that certain questions asked of its witnesses by Plaintiff USAA during depositions are in violation of the “anti-publicity” and “anti-disparagement” clause of a 2014 settlement agreement between the USAA and Mitek. USAA responds that the questions relate to its defense against invalidity arguments asserted in this case by Defendant PNC relying upon Mitek patents as prior art. USAA contends that the Mitek patents cannot be found to be invalidating prior art to the USAA patents because Mitek relied upon USAA confidential research improperly obtained by Mitek to support Mitek’s patents.

After reviewing the briefing and the relevant agreement, the Court finds that Mitek has not shown a sufficient basis for the Court to prevent USAA from asserting its defense against the invalidity claims of PNC. The Court is satisfied that USAA is pursuing relevant information and Mitek is not entitled to restrain USAA from using that information in this action. The Court is not prejudging whether USAA will be successful in that argument, but it should be permitted to make it. The Court also believes that USAA has correctly described the litigation privilege and its effect in this matter. However, the Court need not reach whether the 2014 settlement agreement has been

breached and whether Mitek is entitled to any relief under that agreement. The Court merely finds that the agreement is not sufficient to enjoin USAA from the defense it is asserting in this action to the invalidity claims of PNC.

Accordingly, the motion (Dkt. No. 266) is **DENIED**.

SIGNED this 23rd day of February, 2022.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE